Apart from the involved legal tangle by which Brandt may gain freedom, the way of executive elemency is still open, and will be until Friday morning at 9 o'clock, when the decision will be filed. Until then Brandt is technically a convict, with five years of his thirty-year term behind him, and as such is a fit subject for a pardon from the Governor. After that, with the habeas corpus sustained and Brandt remanded for trial on the indictments pending against him, the Governor's pardon power does not operate. Brandt would then be in the position of a prisoner awaiting trial, and the Governor can parden only a con-

"The constitution provides that the Governor may pardon, after conviction." it was explained by District Attorney Whitman, last night, with reference to this point, and bearing also upon the possible continuation of the Governor's inquiry, through Commissioner Hand, there is nothing to prevent the Governer from going ahead and taking all the testimony he wants, but with Justice Gerard's decision filed and upheld by the higher courts, no one could pardon

#### Assault Charge Proof Lacking.

If the Gerard decicion is sustained after appeal, that will also have the effect of practically freeing Brandt, for the reason that the Gerard decision itself thoroughly knocks out the indictment for first degree burglary, and as to the other indictment, the one for felonious assault, Brandt has already served five years filegally, which would be as much as he would get under a plea of guilty on the second indictment, and it is nelieved that proof to convict on the felonious assault indictment could not be pro-

In any event, unless the Governor seizes what will probably be his last opportunity to pardon Brandt, the former Schiff servant will walk out of the Tombs prison to-morrow, but in that case it will be as a prisoner released on

In view of the fact that both indictments against him are admittedly weak, it is believed that the bail, if any is required, will be very light-much less than the \$5,000 under which he was held five years ago-and that, indeed, it is more in the custody of counsel.

Actually only one serious difficulty confronts Brandt now, and that is based on the possibility that Justice Gerard's decision would be upset by the higher courts, and that Governor Dix might tion of filing an appeal from Justice again refuse to pardon him, in spite of Gerard's decision, provided always that the recommendations of Attorney Gen- the Governor refuses to act even after eral Carmody, District Attorney Whit- receiving Mr. Hand's recommendations an and Special Commissioner Hand, to-day. BRANDT REMANDED FOR TRIAL

indictment for burgiasy in the first degree."

Gerard yesterday afternoon on the applica-

tion for a writ of habeas corpus for Folke

E. Brandt. The decision was handed down

shortly after the word came from Albany

This was the decision given by Justice

Judge Rosalsky Severely Criticised for First Degree Burg-

lary Sentence.

torney General are practically bound to no recourse but to return to Dannemora carry an appeal up, asking that the de- prison, and as his appeal to Governor cision be reversed, so that the point Dix would have failed he would have no may be settled by the highest court, choice but to wait until he can renew

#### Can Go Before Grand Jury.

When the grand jury meets again tomorrow morning, however, Brandt, if not then freed by the Governor's pardon. will at least be in the position of an unconvicted man awaiting trial. As such he would not be a convict, and his testimony before the grand jury would be acceptable. It is known that the grand jury is anxious to hear Brandt, and that they believe that by hearing him they can get closer to the heart of the conspiracy, if one exists, than by any other means, and it is probable that he will go before them to-morrow morning.

No witnesses were heard by the grand jury yesterday, but it is understood that J. C. Rothschild and J. E. Carey, of the Criterion Club, talked with the District Attorney and told him what they could about the alleged conference of the Schiff forces there at the time when Brandt was awaiting sentence five years

Mr. Nicoll issued a brief statement, after the Gerard decision had been announced, as follows:

The decision is an important one and may The decision is an important one and mashave farreaching consequences. We assume that an appeal will be taken and the law finally settled. So far as we are concerned our sole interest is that in a public proceeding the whole truth may come to light and that the investigation before the Commissioner be made as broad as possible.

The Nicoll-Parker letter to the Governor was practically a repetition of Mr. Nicoll's arguments before Commissioner Hand on Tuesday. Their appeal for a further hearing before Hand is believed by the lawyers interested in Brandt's behalf to be a useless proceeding, for the reason that as soon as Justice Gerard's decision is filed the Governor will be

"I think it will be some time in this city before an ignorant boy's plea of guilty, with a statement showing want of guilt, will call forth from the judge before whom he pleads a sentence to state prison until the judge is convinced than probable that he would be paroled beyond a doubt that the prisoner is guilty of the crime to which he pleads guilty.

District Attorney Whitman will have a conference with Attorney General Carmody early next week over the ques-

the entire proceedings before Judge Rosal-

Justice Gerard says:

form of the pleadings, of which

Both the District Attorney and the At- II that situation arises Brandt will have JUDGE AND ATTORNEY GENERAL WHO ACTED IN opinion that such evidence is immaterial. be observed? Must the methods laid down The question before Commissioner Hand by our statutes to BRANDT CASE YESTERDAY.



JUSTICE JAMES W. GERARD. Who sustained writ of habeas corpus giving Brandt a new trial.

ATTORNEY GENERAL CARMODY. Who urged Governor Dix to pardon Brandt at once.

without power in the premises, and any continuation of the Hand inquiry would be purely academic.

Decision Pleases Towns.

Mirabeau L. Towns, chief counsel to Brandt, expressed gratification after the Gerard decision had been announced that the "great right of habeas corpus had again demonstrated its efficiency to right wrongs where executives refused to act." Brandt, said Mr. Towns, happened to be the instrument through which this principle was brought forward, and Brandt would now have the assurance of a fair trial.

"I think it will be some time in this without the premises, and any continuation of the Hand inquiry would be undered and to which he does not plead guilty. It is true that there may be another remedy, in the nature of an appeal or motion in arrest of judgment, but the mere fact that the prisoner is mistaken in making a plea of guilty renders it unlikely that he will be undeceived in time to prosecute an appeal within the time limited by law. The acceptance by the judge of the plea against the prisoner. An error as against the prisoner. An error based on the error of the prisoner in believing that the error of the prisoner in believing that the towhich he admits amount to the crime to which would permit the judge to give approval to a prisoner which some time in this c

Judge Rosalsky, having been thus severely criticised, is then excused for his mistake on the ground of youth and inexperience, Justice Gerard saying:

When I state that the judge committed an error, I do not state that in the sense that he intended designedly to harm or deceive the prisoner. The long sentence given by this judge may have been induced by some record presented to him, but I only find that as a matter of law that the failure of the judge to take some action to inform the prisoner after questioning him and his receiving and acting on the formal plea of guilty, when he should have

prisoner as well as the state, is not justified in accepting the piea and imposing sentence, but is without jurisdiction to sentence a prisoner for a crime which it is plain the prisoner does not admit that he committed and to which he does not plead guilty at error leading to the deception of the prisoner in the technical and legal sense as deprived him of jurisdiction to sentence the prisoner.

#### Young Judge Liable to Error.

His error of judgment was, as far as is disclosed by the record, only such an error of judgment as I myself may make in this decision. It is an error into which a judge new to the bench might well fall and it is one which the trial judge endeavored to correct after the point had been raised on the argument on the writ of habeas corpus before me: although I am satisfied that this correction, which perhaps otherwise would deprive me of jurisdiction to determine this matter, is as void as the original sentence. Carl Fischer-Hansen is left without

smirch for his part in the conviction and sentencing of Brandt by the opinion of Justice Gerard. The opinion says of Hansen: tice Gerard. The opinion says of Hansen:
After the pies of the prisoner and the occurrence of the colloquy between him and
the judge on March 23, 1907, the prisoner
was arraigned for sentence on April 5,
1967. On that date he was represented by
counsel, but that counsel was certainly justified in believing that there was nothing
for him to do but to ask the court to exercise leniency because the counsel was
confronted by the clerk's formal record
purporting to show that on the 28th day of
March, 1967, the prisoner had formally
asked leave to withdraw his plea of not
guilty and had pleaded guilty to burglary
in the first degree.

Justice Gerard notes that Brandt was in-

Justice Gerard notes that Brandt was indicted also on a charge of assault and may

## CARMODY URGES BRANDTPARDON of Judge Rosalsky, in whose court Brandt

#### Dix Replies He Will Take No Action in the Case Until He Sees Commissioner Hand To-day.

(By Telegraph to The Tribune.) Albany, Feb. 21.—Urging the immediate that he united with the District Attorney, in this case. Brandt says he expected his pardon of Folke E. Brandt, the former "believing that justice demands impera-likerty at the end of a year. After serving

"The writ is sustained and the prisoner his time to appeal has expired. Must he remanded to the Tombs subject to an appeal for mercy to the Executive plication for ball to await trial under the plication for ball to await trial under the courts?"

"I have yet to hear any explanation of the courts of the court effectually disposes of the suggestion that tion of Brandt. powerful influences were at work to oring about the incarceration of Brandt," ho

sky are quoted and particular stress is laid says. He discusses at length the employment city of New York" to represent Schiff be-fore the Governor. "For what purpose," cation to the Governor he answers hiraself. ne says, "no attempt has been made to offer any proof supporting the conviction for burglary or to urge the denial of executive clemency upon any other ground than that the prisoner, at some time, er in

> Such an attack would not be permitted, the Attorney General said, in proceedings in which he and District Attorney Whitman had a part, even by Schiff's own lawyers. It certainly was no part of the recdegree. (Filed March 22, 1907) March 8, 1907, feloni-ously did break into and enter the dwellord or material evidence before the Governor. And, the Attorney General reasoned, if anything of that kind entered into the conviction of Brandt, he was wrong

some way, has assailed the fair name of

#### fully convicted and wrongfully imprisoned "Transgression of the Law."

ing house of one Mortimer I. Schiff, in the night time, there being then and "He may be the most atrocious criminal the most degenerate libertine," says Mr Carmody, "but he cannot be deprived of his liberty except upon an indictment charging him with this offence. To charge him with burglary and keep him in prison because he is a libertine is a transgressiof both the form and the spirit of the law. Mr. Carmody gave out this letter to the Governor after several talks with the Executive, who had told him he would take no action in the case until he had conferred with Commissioner Hand. The latter will come here to-morrow and will go over with the Governor the question of ad guilty must be entered in the form, "the defendant pleads that he is guilty" (Code of Criminal Procedure, Section 335), and this plea can only be put in by the defendant himself in open court (Section 235 of the Code of Criminal Procedure), and the judge must inform him of his right to have counsel (Section 308).

On March 28, 1907, what occurred was as follows, as is shown by the record and the stenographer's minutes:

Brandt appeared in court without counsel and entered a formal plea of guilty to the charge of burglary in the first degree, whereupon he was sworn and was questioned by the court. The record shows that he was not asked whether or not he desired to be represented by counsel or have counsel assigned to him by the court.

On the question of whether the examinamitting the testimony of Mr. and Mrs. Schiff and Howard Gans, the immunity proposition and various other phases of the Pending that, the Governor would say nothing about the case and did not seem anxious to discuss it even with the

2. Arming himself therein with such a weapon; or.
2. Being assisted by a confederate actually present; or,
4. Who, while engaged in the night time in effecting an entrance, or committing such a crime in such a building or in escaping therefrom, assaults any person, is guilty of burglary in the first degree.

The question and answers above set forth show that Brandt, whatever other crime he committed, did not "break" to enter within the meaning of the law and show that the crime of burglary in the first degree, or in any degree, was not, in fact, committed. sees the text of the decision. He opposed such action, and filed a brief with the justice opposing it. Nevertheless, it is assumed by many here who know his views as to the justice of freeing Brandt that unless the Governor pardons the convict soon the Attorney General will take no further step in contesting Brandt's release on the writ of habeas corpus.

His answers, however, given on oath to the questioning above, disclosed that although he intended to plead guilty to something, whatever he pleaded guilty to did not amount to burglary in the first difference of the case to date and explains why he united with District Attorney Whitman in opposing the swearing of Mr. and Mrs. Mortimer L. Schiff, Howard S. Gans and I hold that when a defendant puts in a formal plea of guilty, that then, if the lidge proceeds to swear the defendant and learns from him that the acts which he admits doing did not in fact constitute the crime to which he pleads guilty, and that the defendant did not in reality intend to plead guilty to that crime, then the judge, who sits to protect the interests of the

investigation before the co valet of Mortimer L. Schiff, Attorney Gen- tively that the grand jury investigation go eral Carmody fiatly declared in a long to the bottom of this whole case and ascerletter to Governor Dix to-day that he became tain what influences, if any, were instrused to prevent the extension of elemency.

The complete tails are the complete tain what influences, if any, were instrused to prevent the extension of elemency.

"That effort has been renewed in this "I have yet to hear any explanation that results which are before us in the convic- proceeding," adds Mr. Carmody, "and to

#### Opposes Giving Immunity.

"So important is this matter," continues the Attorney General, "that I believe nothof "three leading firms of lawyers in the ling should be done in this present investigation that would either furnish immunity to parties accused or give them any other he asks. In another part of the communi- opportunity of evading or avoiding or clouding the lasue necessarily to be determined "So far as I have been able to learn," Defore justice is ultimately done in this

Mr. Carmody says he is strongly of the



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follows:

and sentenced?

"Upon neither of these points is the evidence sought to be introduced important or

nstructive. The minutes of the grand jury, Mr. Carmody says, do not show that the crime of urglary was committed, and that it is only by stretching every rule in favor of supporting the indictment that it can be In other respects, he points out, it is absolutely defective. Although pleading guilty to the indictment charging burglary, Brandt denied the fact

#### Inconsistent with Honesty.

Brandt must have told his counsel that he was not guilty of burglary, as he told the court," says the Attorney General, and it seems to me absolutely inconsistent with honest proceedings that he could have een convicted and sentenced for a crime that the minutes of the grand jury show that he committed, and that he himself denied when asked about it.

"I do not find it necessary to dwell upon accusations of conspiracy in pointing out these remarkable features. If such a conspiracy existed, then the matter is explained. I have yet to hear any explanation that effectually disposes of the suggestion that powerful influences were at work to bring about the incarceration of

Mr. Carmody then goes into Mr. Schiff's statement of how he found Brandt in his house, in his dressing gown, and in his stocking feet. Brandt claimed to have been there two hours.

"If he went there," says the Attorney General "to commit burglary he had ample opportunity to do so, and had he desired to do so he would not have remained until he was caught, but he did remain apparently for the purpose of meeting Mr. Sania, Whether to rob him, as Schiff claims, or to solicit aid, as Brandt claims, it was

#### Not Punished for Assault

"He may have committed, and undoubtedly did commit, a heinous crime, for which he should have been punished, and for which he already stands indicted under another charge, namely, assault, but that be convicted of and punished for burglary. Under a charge of burglary he cannot be deprived of his liberty, except upon an indictment charging him with this off mice. and being given an opportunity to meet the accusation. To charge him with burg ary and keep him in prison because he is a libertine is a transgression of both the form and the spirit of the law.

him \$50, and asking him to return three days later, at which time he would consider his case, absolutely repelled the idea that Schiff himself thought that Brandt had been guilty of burglary. Mr. Carmody calls the Governor's at-

tention to Brandt's prison record, which shows that during his five years' incarceration only one mark was made against aim, and that for talking in the prison yards. Another fact of great significance, the Attorney General says, was the action was sentenced, in setting aside the judg-

#### Efforts to Block Pardon.

Mr. Carmody states that there is on file In the prison records a letter from Mr. Gans saying that he wished to be informed of any application for executive elemency a year he was transferred to Clinton prison my mind forms the most remarkable epo

in the history of the proceeding. "The Issue should not be clouded. Brandt is not the important factor here. A more important factor is, Will the forms ordained the Constitution for ascertaining guilt



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"First: Was Brandt properly convicted excellency to do a simple act of justice and extend executive elemency to Folke Second: In view of all the circumstances, Engle Brandt. Let him be remanded to the was the sentence excessive; or, taking into custody of the District Attorney of New account the circumstances of the convic- York County, to be tried for any crime tion, the youth of the prisoner and his good that he committed, but let him no longer prison record, is executive elemency war- be punished for a crime which he did not commit."

#### PHYSICIAN ACCUSES BRANDT Says He Had Him Arrested When His Valet for Robbing Him.

(By Telegraph to The Tribune.) Philadelphia, Feb. 21 .- Folke E. Brandt, ormer valet of Mortimer L. Schiff, was arrested as a thief in Philadelphia before he v as sent to jail for thirty years for robbing his employer, according to Dr. James Weir Robinson, of No. 226 South 16th street.

"I employed Brandt in 1905." he said, "as my valet. I was then living at No. 402 South Broad street. He was a tall, good looking young man, who dressed well and had refined manners and bearing. I secured him through an intelligence office that made a specialty of Swedish help.

Brandt did not like the negro help, and began to make preparations to leave my place. At the same time I found that he ad stolen my clothing and had gone to patients whose names he secured from my account books and collected money from them that he failed to turn over to me-in fact, that he had stolen wherever he had a chance. "I had him arrested and I recovered most

of the stolen goods, and withdrew the prosecution when I received a letter from him begging forgiveness and promising to leave the city if I let him go."

#### SIXTH GIRL ATTACKED

#### Bay Ridge School Teacher Has Broken Skull-Man Escapes.

May Chase, twenty years old, a school Drefield. teacher, living with her mother and two sisters at No. 418 80th street, Bay Ridge, was on her way to a butcher shop last evening, when a man struck her on the head with some blunt instrument. Before she could make an outcry he struck her again, knocking her unconscious.

William Dunne, of No. 426 80th street, saw the man dragging the unconscious girl into a vacant lot nearby. Rememis not what he was punished for. He is bering the many assaults that have ochere charged with burglary. He can only cured in that section in the last five night: "It is far from my intentions to inmonths, Dunne let out a yell and then terfere in any way with the plans of Marstarted after the man, who ran. Dunne's cries attracted several others, among publican executive committee. Mr. Campthem Mrs. Annie Chase, mother of the bell has done well in his official capacity, Led by Dunne-the party took up the accord with my views.

a half dozen blocks were covered when that I see certain persons. To do that I "The action of Schiff, in escorting him to the fugitive slipped into a house on the had to be at the office of the Republican the front door, letting him out and giving Shore road and made good his escape. headquarters in Court street Tuesday, and Inquiries were made about the place my reception there was spontaneous.

John Jameson

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genial glow of health. V. A. Taylor & Co., 29 B'way, N. T. where the man was seen to enter, bu

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braces up flagging en-

ergy, promotes socia-bility, instils the

he was not found. Miss Chase was taken to her home in an unconscious condition. Dr. W. M. Shepherd, of No. 415 56th street, found

that Miss Chase was suffering from fractured skull. Captain Palmer, of the Fort Hamilton police station, with a horde of his men, was soon on the case. Every effort to revive Miss Chase and learn something

regarding the attack was in vain. According to Dunne, the man was about thirty years old, five feet nine tall, wore a long black coat, slouch hat and was heavily built. This is the sixth woman who has been assaulted in the immediate vicinity in

the last five months. The other victims were Agnes Waugh, Olga Sopan, Hannah Blixt, Beatrice Goldberg and Evelyn

#### WOODRUFF MERELY HELPING Not Interfering with Committee Chairman, He Says.

Alluding to the statement of Representative William H. Calder, made yesterday at Washington, in which Mr. Calder said he did not believe that Timothy L. Woodruff desired the leadership of the Republican party in Brooklyn, Mr. Woodruff said last cus B. Campbell, the chairman of the Reand everything he has done has been is "There were a lot of things in connection

chase toward Fort Hamilton. More than with the coming primaries which demanded

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# Hunyadi a NATURAL LAXATIVE CONSTIPATION

shortly after the word came from Albany that Governor Dix had declined to act in the case until he had conferred with Hand. Preceding the final words sustaining the writ, it said:

"My decision on this writ does not set the prisoner free. The prisoner may or may not be guilty of the crime charged in the indictment, and my decision simply puts indictment, and my decision simply puts indictment, and my decision simply puts in the same position, except for the service of a sentence of nearly five years, that he was in before sentence was imposed upon him."

The facts occurring prior to the imposition of this sentence, so far as disclosed by the record before me, are as follows: On March 22, 1907, Brandt was indicted, charged with burglary in the first degree and receiving. The indorsement on the indictment shows that on March 25, 1907, he pleaded "Not guilty." And there is opposite the printed word "counsel" the name as follows: "March 28, 1907. Court meets pursuant to adjournment, present Hon. Otto A. Rosalsky, Judge of the Court of General Sestions. "If Brandt was sentenced because he was involved in a net of verbiage," says Justice Gerard, "and pleaded guilty to a crime which his examination at the time of his ples showed he did not admit committing and did not intend to plead guilty to, he should not be left to seek his remedy from The People executive clemency alone. He is entitled VS. to a decision of the court, relieving him Foulke Engle Brandt and there a human beins, and then and there arining himself with a certain knife and a certain club, and from the stigma of his mistaken plea."

And in discussing the proceedings before

Severe Criticism of Rosalsky.

"There is and should be a distinction between the commission of a mere error made, possibly on a ruling as to the admission or the rejection of evidence by a trial judge, and the occurrence of what amounts to a legal deception as far as the prisoner is concerned, and which is, therefore, in derogation of his rights," says Justice Gerard. "An evror such as an error in the patitive of the commission of a mere error in the prisoner was again arraigned and received a sentence of thirty against the crime of burglary in the first degree."

Plea of Guilty Discussion is the prisoner as a price of the crime of burglary in the first degree. Gerard. "An error such as an error in the nature of a ruling on the admission or re-The statute provides that the plea guilty must be entered in the form, "1 jection of evidence may be reversed on appeal, but an error of the nature of the one made here, after its occurrence, gives the udge no jurrisdiction to sentence the pris-

He continues:

There are active errors and errors of silence. Here, the trial judge heard the prisoner plead guilty. The prisoner was learned for the aid of his counsel and search asked for the aid of his counsel and search ly in the plea made when the judge short represented by counsel, the prisoner gasked for the aid of his counsel and search ly in the plea made when the judge short representates which show that the prisoner idea to the state of acts which show that the prisoner is guilty to such a carrier of the state of the stat sentencing him he will be confirmed in

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He continues:

Judge Without Jurisdiction.